Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

STATE OF NEVADA'S RESPONSE TO CALIFORNIA'S MOTION FOR LEAVE TO FILE COMPLAINT

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STATE OF NEVADA'S RESPONSE TO CALIFORNIA'S MOTION FOR LEAVE TO FILE COMPLAINT

I. THE STATE OF NEVADA DOES CLAIM THE 1863 SURVEY AS HER BOUNDARY WITH CALIFORNIA.

California is correct when she asserts that Nevada has claimed since 1865, and does presently claim by statute, that her westernmost boundary with California extends to the Houghton-Ives Line. As noted in California's Motion for Leave to File Complaint (pp. 4 and 5), this line was based on the survey jointly undertaken with California in 1863 to settle boundary differences culminating in the "Sagebrush War" (Honey Lake War).

Although the location of the boundary was jointly surveyed and deter-

mined by the states in 1863, the adoption of the survey was by the unilateral act of each state legislature in reliance on the consensus reached as to where the boundary was. This consensual arrangement, while not rising to the dignity of a compact between states as contemplated by Article I, Section 10, Clause 3, U. S. Constitution, was nonetheless a recognition by each state that each would observe the boundary surveyed in 1863.

II. THE MARKED BOUNDARY ALONG THE VON SCHMIDT SURVEY OF 1872-73 WAS FIXED SOLELY BY THE UNITED STATES.

California correctly states that the 1863 line was observed by both states until the Von Schmidt Line was set in 1873, and that since 1873, each state has exercised and continues to exercise political jurisdiction and sovereignty up to the Von Schmidt Line as presently marked on the ground.

The Von Schmidt survey resulted from the actions of Willis Drummond, Commissioner of the U. S. General Land Office, following his public proclamation during a visit to San Francisco, that the California-Nevada boundary had never been correctly surveyed and that he would seek a congressional appropriation to have the survey rectified.[1] On June 10, 1872, Congress provided "for a survey

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1/ Bancroft, History of the Pacific States, Vol. XXV, p. 156

of the eastern boundary of California ... lying north of the initial point in Lake Bigler (Tahoe) estimated to be 210 miles."[2]

The United States retained Von Schmidt to do the survey, and in the course of his survey, Von Schmidt physically relocated the 1863 boundary monuments to a new position 3102 feet east of the 1863 surveyed boundary at the north shore of Lake Tahoe and 4036 feet east of the 1863 boundary at Crystal Peak near Verdi, Nevada.[3]

Neither California nor Nevada ever requested or authorized the United States to remark and change their boundary as jointly fixed in 1863. Thus, Von Schmidt and the General Land Office did not survey California's eastern boundary as then established and posted, but instead proceeded without authorization from either state to relocate the boundary, relocate the 1863 monuments and changing them from "1863" to read "1873".[4]

2/ 17 Stat. 358

3/ Von Schmidt, Report of Survey 1873, U. S. Bureau of Land Management, Reno, Nevada

4/ C. H. Sinclair. The Oblique Boundary Line between California and Nevada, Appendix 3 to Sen. Doc. Vol. 6, No. 68, 56th Cong. 2d Sess., 1901, pp. 277, 278, 293, 295 and 348

California and Nevada have never recognized in law the 1872-73 Von Schmidt Line. To the present day, each state, as noted, recognizes by statute the 1863 surveyed boundary.

III. A CONTROVERSY DOES PRESENTLY EXIST BETWEEN CALIFORNIA AND NEVADA OVER THE LAND BETWEEN THE 1863 AND 1873 SURVEYS.

In 1943, the California Legislature reenacted the 1864 statute adopting the 1863 Houghton-Ives Line by codifying the same as Section 160 of the Government Code.[5] As recently as November 7, 1972, the People of California amended their Constitution to provide that California's boundaries are those described in the Constitution of 1849 "as modified pursuant to statute."[6] The People of California also deleted in 1972 a constitutional provision which empowered the Legislature to alter, change or redefine her boundaries in cooperation with any adjoining state.[7]

California's assertion that she exercises legal sovereignty and dominion to lands east of the 1863 Houghton-Ives Line and up to the Von Schmidt Line of 1873 is contrary to her own constitutional and statutory mandate, and therefore she is not empowered to assert sovereignty and dominion east of the 1863 line.

5/ Calif. Stats., 1943, Chapter 134

6/ Section 2 of Article 3

7/ Former Section 2 of Article 21

A controversy therefore exists between the two states as to whether California or Nevada is entitled to exercise sovereignty and dominion over the lands lying between the 1863 and 1873 surveyed lines.

IV. THE CONTROVERSY CANNOT BE RESOLVED BY COMPACT.

The preferred means of settling disputes between states by compact[8] is not available in the matter sub judice because the People of California, as noted above, have specifically withdrawn from their Legislature any power or authority to alter or redefine her boundaries by agreement with adjoining states.

California's recognition of her legal disability precluding resolution of the present dispute by legislative means is revealed by Assembly Concurrent Resolution No. 34 (Exhibit A to California's Motion), which contemplates resolution of the dispute by judicial means.

CONCLUSION

In view of the existing controversy between California and Nevada, and because there is involved herein not merely a suit to determine legal title to and ownership of the disputed area, but a larger question of governmental

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8/ See Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 104

authority and jurisdiction over that area, Nevada submits the case is an appropriate one for the exercise of original jurisdiction of the Court.[9] *Nevada therefore urges the Court to exercise its original jurisdiction.*

Respectfully submitted,

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9/ Precedent for a Response agreeing that a case is an appropriate one for the exercise of original jurisdiction is the response by the United States in Utah v. United States, 387 U.S. 902.

CERTIFICATE OF SERVICE

I, ROBERT F. LIST, Attorney General of Nevada, hereby certify that on the 16th day of May, 1977, I mailed by first class mail, postage prepaid, three copies to each of the following:

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